

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding to)
Implement the Federal)
Communications Commission's)
("FCC") *Triennial Review Order*,)
FCC No. 03-36.)
_____)

DOCKET NO. 03-0272

PREHEARING ORDER NO. 20762

Filed Jan. 15, 2004
At 1:30 o'clock P.M.

Chief Clerk of the Commission

----- In the Matter of -----)
)
 PUBLIC UTILITIES COMMISSION) Docket No. 03-0272
)
 Instituting a Proceeding to) Order No. 20762
 Implement the Federal)
 Communications Commission's)
 ("FCC") Triennial Review Order,)
 FCC No. 03-36.)
)

The current parties to this docket are: the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY (the "Consumer Advocate"); AT&T COMMUNICATIONS OF HAWAII, INC.; DIRECT TELEPHONE COMPANY INC.; MCI METRO ACCESS TRANSMISSION SERVICES, INC.; PACIFIC LIGHTNET, INC.; SANDWICH ISLES COMMUNICATIONS, INC.; TIME WARNER TELECOM OF HAWAII, L.P., dba OCEANIC COMMUNICATIONS; UNITED STATES DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL EXECUTIVE AGENCIES; and VERIZON HAWAII INC. ("Verizon Hawaii") (collectively, the "Parties").

Verizon Hawaii, on behalf of the Parties, filed a proposed stipulated "Prehearing Order" on January 12, 2004, in compliance with Order No. 20712 for our consideration and approval ("proposed stipulated prehearing order"), attached to this order as "EXHIBIT A". The proposed stipulated prehearing order sets forth the issues, a schedule of proceedings, and all other procedural matters to govern the 9-month Review or Part II of the proceedings in this docket.

Upon review, the commission will approve the Parties' proposed stipulated prehearing order subject to one modification. The first sentence of Section III of the order shall be amended to read as follows:

Copies of all filings shall be filed with the Commission and served on each Party as follows:

Commission	Original + 9 copies
Consumer Advocate	2 paper and one electronic copy
All other Parties	1 paper and one electronic copy

THE COMMISSION ORDERS that the Parties' proposed stipulated prehearing order, filed on January 12, 2004, and attached to this order as "EXHIBIT A", is approved and shall be made part of this order, subject to the one modification set forth above.

DONE at Honolulu, Hawaii this 15th day of January,
2004.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By _____
Carlito P. Caliboso, Chairman

By _____
Wayne H. Kimura, Commissioner

By _____
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

Ji Sook Kim
Commission Counsel

03-0272 eh

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of)

PUBLIC UTILITIES COMMISSION)

) Docket No. 03-0272

Instituting a Proceeding to Implement the
Federal Communications Commission's
("FCC") *Triennial Review Order*, FCC NO.
03-36.)
_____)

PUBLIC UTILITIES
COMMISSION

2004 JAN 12 P 3:50

FILED

PREHEARING ORDER NO. _____

and

CERTIFICATE OF SERVICE

Filed _____, 2004

At _____ o'clock _____.m.

Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of)	
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PUBLIC UTILITIES COMMISSION)	Docket No. 03-0272
)	
Instituting a Proceeding to Implement the)	
Federal Communications Commission's)	
("FCC") <i>Triennial Review Order</i> , FCC NO.)	
03-36.)	
_____)	

PREHEARING ORDER

This Prehearing Order shall govern "Part II: 9-Month Review" of this docket ("Part II"), and Parties shall comply with its terms.¹

**I.
STATEMENT OF ISSUES**

The Parties agree that the issues for Part II are:²

¹ The "Parties" are the following "*TRO Parties*" as identified in Prehearing Order No. 20712, together with any persons that the Public Utilities Commission of the State of Hawaii (the "Commission") may authorize to be Parties hereafter: Verizon Hawaii Inc. ("Verizon"), Department of Commerce and Consumer Affairs, Division of Consumer Advocacy (the "Consumer Advocate"), AT&T Communications of Hawaii, Inc. ("AT&T"), Pacific LightNet, Inc. ("PLNI"), Time Warner Telecom of Hawaii, L.P. dba Oceanic Communications ("Time Warner"), the United States Department of Defense and All Other Federal Executive Agencies ("DOD"), Direct Telephone Company Inc. ("DTC"), Sandwich Isles Communications, Inc. ("SIC") and MCImetro Access Transmission Services, Inc. ("MCImetro").

² The Parties will inform the Commission when they are able to settle an issue and thereby remove it from those to be addressed in this docket. In addition, in Order No. 20712 the Commission included as an issue for the Parties to consider "Is a review of Verizon's Hawaii's hot cut process and the development of a new batch cut process, if found warranted, necessary under the FCC's *Triennial Review Order* when Verizon Hawaii has decided to not challenge the FCC's finding of impairment in any of the State's markets during the 9-month period?" The Parties have considered this issue and conclude that a hot cut process review and the development of a new batch hot cut process are not necessary at this time. Therefore, the Parties, after consideration, have not included the issue here. The Parties, however, agree that the batch hot cut process must be considered if and when Verizon challenges the finding of impairment for mass-market switching for any part of its service territory in Hawaii.

1. What is the appropriate cross over point between enterprise and mass-market customers?
2. What type of procedures should be developed to conduct continued reviews for the unbundled loops, transport and switching under ¶¶ 340, 418, 526 and 534 of the *Triennial Review Order*? Should the procedures include a notification requirement?

II. ORDER OF PROCEDURE

The Parties agree to proceed as set forth below and in accordance with the Schedule of Proceedings in Section IV.

Issue 1.

A. TESTIMONY AND CROSS-EXAMINATION. All testimony shall be in writing. Cross-examination of any witness shall be limited to one attorney for a Party or participant. The Parties shall avoid duplicate or repetitious cross-examination. There shall be no friendly cross-examination. Recross-examination of a witness shall be limited to the material covered in redirect examination unless otherwise permitted by the Chairman. All written testimony, including exhibits of witnesses, shall be submitted upon paper 8-1/2 x 11 inches in size, with lines numbered, and shall be served on dates designated in the Schedule of Proceedings. When filing any testimony, the Parties shall simultaneously provide all workpapers and supporting documents as part of the testimony. The testimony and exhibits shall include appropriate footnotes or narratives setting forth the information depicted, explaining details, and the methods employed in preparing any statistical computations and estimates. Each Party may follow its own numbering system for written testimony and exhibits, provided the numbering system utilized is consistent and clearly understandable. The Parties shall prepare a table listing

each written testimony, and each exhibit by title, and identifying the witness sponsoring the testimony and the exhibit. The exhibit number and the docket number of the proceeding shall be shown in the upper right-hand corner of each page. Each exhibit shall be submitted on a separate page. A Party introducing new matters to its written testimony and exhibits during the hearing, whether by way of revisions or supplements shall attach a sworn affidavit explaining why these matters were not originally submitted. The Commission may, if the explanation is unreasonable, reject the amended testimony or exhibits.

B. WITNESSES. Witnesses submitting written testimony and exhibits shall be made available for cross-examination at the hearing. Witnesses may have the work papers used in preparing the evidence they sponsor available at the hearing. Witnesses will not be permitted to read prepared testimony at the hearings. Witnesses who will present oral direct or rebuttal testimony must present said testimony at the same time. In the presentation of the testimony, each witness may give a brief summary of the testimony and exhibits and shall summarize the issues raised by such testimony. Each witness shall be subject to cross-examination for direct and/or rebuttal testimony and exhibits. The Parties in this case should cooperate to accommodate the schedules of any mainland witnesses and should inform the Commission in advance of any scheduling difficulties of mainland witnesses. If any Party has any objection to scheduling a witness in advance of other witnesses, the Party should make a timely objection to the Commission.

C. ADMISSIONS OF FACT AND MATTERS OF PUBLIC RECORD. Documents identified as matters of public record may be offered as evidence to avoid unnecessary proof and to facilitate these proceedings. The following documents may be identified as matters of public record: (1) public financial reports, tariffs, previously submitted written testimonies and exhibits filed with this Commission and the Department of Commerce

and Consumer Affairs; (2) published decisions issued by state and federal agencies; (3) published scientific or economic statistical data, material and textbooks and technical or industrial journals; and (4) specified parts of the official record of previous proceedings of this Commission. The matter intended to be offered as evidence must be clearly identified by reference to the date and place of publication and the file or docket number. The identified document must be available for inspection by the Parties. Parties shall have the right to explain, qualify or conduct cross-examination with respect to the identified material. The Commission will rule on whether specified and identified material can be admitted into the evidence when a Party proffers such material for admission as evidence. From time to time, the Parties may enter into stipulations that material, meeting the above criteria, or any portion of such material may be introduced into evidence.

Issue 2. This issue shall be addressed solely in briefs, if the Parties are unable to submit a stipulated plan.

III. COPIES OF FILINGS

Copies of all filings shall be filed with the Commission and served on each Party as follows:

Commission	Original + 8 copies
Consumer Advocate	2 paper and one electronic copy
All other Parties	1 paper and one electronic copy

Each Party shall provide copies of its filings to the other Parties on an expedited basis. This means that, where practicable, copies of the filings should be sent to the other Parties via e-mail in a standard electronic format that is readily readable by the Parties. If service is to or from an off-island (Oahu) location, the serving Party shall send a copy of the filing via express delivery. Each Party must provide electronic addresses for e-mail purposes to the other Parties. All Parties

shall prepare electronic copies of workpapers, documentation or exhibits attached to their filings unless the preparation of such exhibits is not practical (i.e., the scanning of an entire book). In addition, all Parties shall submit an electronic copy of each filing to the Commission's general electronic mail address at Hawaii.PUC@hawaii.gov for up-loading on to the Commission's website.

IV. SCHEDULE OF PROCEEDINGS

The Parties shall adhere to the following schedule of proceedings:

January 12, 2004	Parties file the Stipulated Prehearing and Protective Orders.
January 26, 2004	Parties serve IRs on each other.
February 2, 2004	Objections to any IR due.
February 9, 2004	Responses to IRs due.
February 23, 2004	Direct testimony due.
March 1, 2004	Parties serve IRs on each other.
March 8, 2004	Objections to any IR due.
March 15, 2004	Responses to IRs due.
March 29, 2004	Rebuttal testimony due.
April 5, 2004	Parties serve IRs on each other. Requests for hearing, if any, due ³
April 12, 2004	Objections to any IR due. Objections to requests for hearing, if any, due
April 19, 2004	Responses to IRs due. The Parties ask that the Commission issue its decision on hearing request, if any. (The Parties request that the Commission provide at least two weeks notice of any hearing to allow for preparation and the scheduling of witnesses.)
At the call of the Commission, if required	Hearing, if required (no more than two days).
If no Party requests a hearing, May 17, 2004; If a Party requests but is denied a hearing, four weeks after the Commission denies the request, or June 2, 2004, whichever is earlier; or If a hearing is held, June 2, 2004.	Briefs

³ Verizon does not believe that any hearings are necessary.

V.
REQUESTS FOR INFORMATION

The Parties agree that the number of information requests ("IRs") that each Party may ask another Party shall be limited to 25 for the proceeding. This means that, for example, Verizon may ask AT&T a total of 25 IRs in the proceeding, MCI a total of 25 IRs in the proceeding, and so forth. The 25 IRs in the proceeding may be allocated to the various rounds of IRs at the discretion of the requesting Party. Each subpart to an IR shall be counted as one IR for purposes of the 25 limit. For example, an IR that requests a Party to explain how it arrived at a particular conclusion and to provide documentary support for that conclusion would be counted as two IRs. Any Party may file a motion for permission from the Commission to ask additional IRs, if necessary, unless an agreement can be reached among the Parties to raise the 25 IR limit. Copies of all IRs and responses shall be served on all Parties.

Subject to the limitation that each Party may ask only a total of 25 IRs of another Party for the proceeding, a Party may submit IRs to another Party within the time schedule specified in this Prehearing Order. After the scheduled date for submitting IRs has passed, no additional requests for information shall be allowed except upon stipulation by the Parties or by approval of the Commission upon good cause shown. The Parties shall use their best efforts to serve all IRs and responses by electronic means. Electronic service of responses shall be deemed timely made if sent no later than 4:30 p.m. HST on the date due.

In responding to an IR, a Party shall not be required to provide data that is already on file with the Commission or otherwise identified as a matter of the public record. The responding Party shall provide the docket number and filing date or other identifying information to the requesting Party. A Party shall not be required to recalculate, trend, reclassify or otherwise rework data contained in its files, unless otherwise ordered by the Commission.

A Party may object to responding to an IR seeking information that it deems irrelevant, immaterial, unduly burdensome, onerous, or repetitious, or otherwise claimed to be privileged or subject to protection (confidential information). If a Party claims that information requested is privileged or confidential, and withholds production of all or a portion of such privileged or confidential information, the Party shall: (1) provide information reasonably sufficient to identify the privileged or confidential information withheld from the response, without disclosing privileged or protected information; (2) state the basis for withholding the privileged or confidential information (including, but not limited to, the specific privilege applicable or protection claimed for the confidential information and the specific harm that would befall the Party if the information were disclosed); and (3) state whether the Party is willing to provide the privileged or confidential information pursuant to the protective order.

Parties seeking production of documents notwithstanding a Party's claim of privilege or confidentiality may file a motion to compel production with the Commission.

Subject to objection, responses to the IRs of the Party may be introduced into evidence.

The Parties are encouraged to meet informally to work out problems with respect to understanding the scope or meaning of an IR or with respect to the availability of information. If a Party is unable to provide the information within the time specified in the Schedule of Proceedings, it should so indicate to the inquiring Party as soon as possible, and the Parties shall endeavor to agree upon a later date.

Responses to IRs that would require the reproduction of voluminous documents or materials may be made available for reasonable inspection and copying at a designated location. In the event such information is available on computer diskette or other readily available electronic medium, the Party responding to the information request may make available the diskette or other readily available electronic medium to all Parties and the Commission.

The responses of each Party shall adhere to a uniform system of numbering. For example, a Verizon response to an IR from AT&T shall be designated "VZ Response to AT&T-IR- ."

To the extent that any response to an IR is believed to be non-responsive or incomplete, the requesting Party shall first contact the responding Party to informally discuss the matter in an effort to determine the basis for the response. If, despite such efforts, the Parties are unable to reach a resolution on the matter, the requesting Party may file a motion to compel a response from the responding Party. The moving Party may request the Commission to either (a) modify the schedule of proceeding to accommodate for the delay due to the actions of the non-responsive Party or (b) supplement any filing affected by the non-responsive or incomplete response when the information becomes available.

VI. COMMUNICATIONS

Communications among the Parties may either be through counsel or through the persons designated below:

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**VII.
GENERAL**

These procedures are consistent with the orderly conduct of this docket. Pursuant to § 6-61-37 of the Commission's Rules of Practice and Procedure, the Prehearing Order shall control the subsequent courses of the proceedings, unless modified at or prior to the hearing to prevent manifest injustice.

The Commission reserves the right, due to the complexities of the case, to require workpapers (or other information) to be submitted for the record.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Prehearing Order No. 20762 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: January 15, 2004